

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

<b>AMAZON.COM AND AMAZON DATA</b>	)	
<b>SERVICES, INC.,</b>	)	
	)	Civil Action
<b>Plaintiffs,</b>	)	No. 1:20-CV-484
	)	
<b>v.</b>	)	July 17, 2020
	)	10:45 a.m.
<b>WDC HOLDINGS, et al.</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**TRANSCRIPT OF MOTION HEARING PROCEEDINGS**  
**(Via Teleconference)**  
**BEFORE THE HONORABLE LIAM O'GRADY,**  
**UNITED STATES DISTRICT COURT JUDGE**

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MORNING SESSION, JULY 17, 2020

THE COURT: Hi. This is Judge O'Grady. Good morning.

THE COURTROOM CLERK: Good morning, Judge. I am here, as well as counsel.

THE COURT: All right. Good morning. Let's call the case, then, Amanda. Thank you.

THE COURTROOM CLERK: The Court calls case 1:20-CV-484, *Amazon.com, Inc., et al. versus WDC Holdings, LLC, et al.* for a motion hearing.

May I have the appearances, please, first for the plaintiff.

MS. PAPEZ: Good morning, Your Honor. May it please the Court, this is Elizabeth Papez of Gibson, Dunn & Crutcher, and I'm appearing today with my colleagues, Patrick Stokes, Travis Andrews, Lora MacDonald, and Claudia Barrett on behalf of plaintiffs, Amazon.com, Inc. and Amazon VA Data Services.

THE COURT: Good morning to all of you.

MS. PAPEZ: Good morning.

THE COURT: And for defendant.

MR. GARNETT: Good morning, Your Honor. Stan Garnett and Greg Brower with the law firm of Brownstein Hyatt Farber Schreck, together with James Trusty from the Ifrah law firm.

I'm appearing this morning on behalf of Brian Watson and WDC Holdings.

THE COURT: All right. Good morning to each of you. This

1 comes on for plaintiffs' motion for an order to show cause why  
2 the defendants shouldn't be held in contempt of the June 5th  
3 preliminary injunction.

4 I read the parties' position papers, and I thank you for  
5 the detailed analysis that you all brought. And I've read the  
6 cases, and I guess I have a couple of questions first, and that  
7 is, what's the -- first I would like to know the status of the  
8 appeal of the TRO and PI at the Fourth Circuit, and I would  
9 invite whoever would like to to respond.

10 MR. GARNETT: Your Honor, this is Stan Garnett on behalf  
11 of the defendants, Watson and WDC. That appeal was filed, I  
12 believe, by the Ifrah law firm, and Mr. Trusty may have the  
13 details better than I do, but I believe it was filed on July 6th,  
14 a week ago this last Monday, and I don't believe we have received  
15 any further communications from the Fourth Circuit since the  
16 filing of the notice of appeal, and, of course, we followed that  
17 up by a motion to stay this case during the pendency of the  
18 appeal. But perhaps if I can ask Mr. Trusty, is there anything  
19 that I've missed here, Jim, that's been recently received from  
20 the Fourth Circuit?

21 MR. TRUSTY: No. I think the only thing we've got back  
22 from the Fourth Circuit is just an acknowledgment of the case,  
23 but not any sort of briefing schedule or anything yet.

24 THE COURT: And did you request an expedited briefing  
25 schedule?

1 MR. GARNETT: We have not -- go ahead, Jim.

2 MR. TRUSTY: I was going to say I don't think we did, but  
3 maybe that's something we should try to consider.

4 THE COURT: Well, okay. In my experience, that's  
5 something that the Fourth Circuit is looking for, and so -- all  
6 right. Well, keep me abreast of that, if you would.

7 So, my question really was as to whether I have  
8 jurisdiction at this stage over the order that I issued, and  
9 whether, in fact, the show cause is properly before me while the  
10 Fourth Circuit considers the appeal. And I guess neither of the  
11 parties were really focused on that in their briefing, but it's  
12 obviously something that the Court looks at, and so I want to  
13 know what your -- Ms. Papez, what's your position on whether or  
14 not I have the jurisdiction to move forward on your show cause?

15 MS. PAPEZ: Yes, Your Honor. Thank you. Our position is  
16 the Court does have jurisdiction. We have, in fact, researched  
17 this issue, and we have filed the current papers with a view to  
18 complying both with the Fourth Circuit appeal and the defendants'  
19 motion to stay that's pending before Your Honor and was entered  
20 last week for a hearing on August 21, preceded by some briefing  
21 earlier in August.

22 On the jurisdictional point, Your Honor, we're happy to  
23 put in papers if it would aid the Court. We filed our show cause  
24 motion on July 2nd, so before defendants filed their notice of  
25 appeal. And unlike a 1291 appeal as a right, an interlocutory

1 appeal from an injunction under 1292(a) does not divest the Court  
2 automatically, the District Court, of jurisdiction once the  
3 appeal notice is filed.

4 So, the Court has discretion to continue proceedings  
5 subject to a request to stay, which defense counsel has filed and  
6 is noted in its schedule for hearing in August. The proceedings  
7 that we request on the show cause, we thought, might help  
8 efficiently address both the stay request that the defense  
9 counsel has filed with Your Honor and also potentially inform,  
10 maybe even moot the Fourth Circuit appeal.

11 It appears that the primary provision that the defendants  
12 contest on appeal is paragraph 2 on the judgment security. What  
13 we had hoped to do, and we've today proposed a schedule on the  
14 show cause that would allow some discovery that would be complete  
15 before Your Honor hears the stay motion on the PI on August 21,  
16 and if it turns out that the discovery shows that compliance with  
17 this provision is impossible or there are issues with it that we  
18 didn't anticipate, you know, we're certainly open to modifying  
19 the order or taking whatever steps are necessary to save this  
20 Court time and certainly the Fourth Circuit while protecting all  
21 parties' rights.

22 THE COURT: Okay. All right. Thank you. All right,  
23 then, I don't know whether the defendant wants to respond to  
24 that, but why don't -- instead, why don't we just allow argument  
25 on the motion itself, and, Ms. Papez, if you want to move forward

1 on that and any other additional matters to the show cause  
2 request. As I said, I've read the briefs, and, you know, we've  
3 got the three areas that Amazon would like to focus my attention  
4 on, and I understand that. I guess I have a question about the  
5 property that was sold that concerns paragraph 7. Was that sold  
6 and the money was disbursed before any lis pendens could have  
7 been put on the property? Is that what happened?

8 MS. PAPEZ: I'm sorry, Your Honor, is that question  
9 directed at plaintiffs, or is that something that you  
10 were {indiscernible} to you?

11 So, our understanding, although the defendants have not  
12 responded to our inquiries about what happened to the proceeds,  
13 our understanding -- we just found this from public records  
14 searches -- is that the property sale closed on June 19th of  
15 2020. We were not aware that the property was being sold. We  
16 had asked defendants some questions about the disposition of  
17 various assets on June 15th. They didn't respond.

18 So, all we know thus far, despite some inquiries to  
19 defendants about the sale and the proceeds, is that the property  
20 was sold on June 19. The record says it was sold for  
21 \$1.85 million. The asset statement that the defendants filed in  
22 connection with our current papers list an unencumbered equity  
23 interest in that property of \$688,000. So, as far as we know,  
24 they may have netted anywhere between 6 and \$700,000 of proceeds  
25 from that sale, but we don't know where they went.



1           As to your question about lis pendens, we weren't aware  
2 that the property was up for sale and, frankly, Your Honor, we  
3 weren't pursuing an attachment during any lis pendens proceeding  
4 on that property precisely because we had the preliminary  
5 injunction that says the defendant shall not be disposing of  
6 assets subject to the PI.

7           If they thought there was an exception, we wish they would  
8 have brought it to our attention. We asked about this specific  
9 issue on June 15. And the other issue is they have an obligation  
10 on paragraph 2, wholly apart from paragraph 7, that says they're  
11 supposed to put up the 21 million in judgment security, including  
12 through substitute assets that they requested and the Court  
13 granted at their request in May.

14           And so, even if they could dispose of the asset, we think  
15 they should have contacted us and offered to put the proceeds of  
16 the sale into an escrow or toward a bond, and they did neither.

17           THE COURT: Okay. All right. Thank you. Go ahead and  
18 make the rest of your argument this morning.

19           MS. PAPEZ: Sure, Your Honor. I know you're familiar with  
20 the papers. I had a couple of preliminary points I was going to  
21 highlight, how we might achieve a path forward, subject to the  
22 Court's questions, and if the Court has anything else that I  
23 should address, I'd be happy to do so.

24           Obviously, we're here, you know, for the Court's  
25 assistance on facilitating compliance with the PI. We have spent

1 enormous time and efforts since May trying to resolve these  
2 issues without burdening the Court.

3 The reason we're here and the problem we have is that now,  
4 three months into this case since the TRO and over a month after  
5 the PI, the defendants, who claim at least 60 million in net  
6 assets in their current filings and who signed confidentiality  
7 agreements on the property transactions at issue in this suit,  
8 have not produced one penny of the judgment security that the  
9 Court has ordered, nor have they provided any of the confidential  
10 information inventory that paragraph 5 requires.

11 And so, instead, they've been doing things like  
12 liquidating the real estate and not responding to the questions.  
13 And so we wanted to do this by agreement. We're trying to be  
14 judicious, Your Honor, in responding to this problem. And I  
15 would highlight that we are not currently seeking contempt  
16 sanctions at this time. We're moving for the order to show cause  
17 why the defendants purportedly can't comply with these  
18 provisions. And because -- and I think they agree that the  
19 appropriate step is some discovery. They say this on page 13 of  
20 their reply brief. We want to work with them to discern these  
21 issues and also inform the Court for precisely the reasons the  
22 Court identified at the outset of this hearing. There's a  
23 pending appeal. There seems to be certain provisions at issue  
24 driving the appeal. If the issue is paragraph 2 and the 21  
25 million and it's truly impossible for them to comply, we're not

1 looking to get blood from a stone, we're not looking to waist  
2 litigation time pursuing things that aren't enforceable, but  
3 candidly, at this point, we can't take defendants' word for it.  
4 They've got to provide some proof. And that's actually the legal  
5 standard that the parties agreed upon, if you look at pages 8 and  
6 9 of their brief, the *Ali* case and the *Rylander* case, they say,  
7 where there's been a violation of an order, which they admit  
8 here, and they say they have a justification, namely that they  
9 made all good efforts and it's impossible, they simply don't have  
10 the assets, the burden is on them to prove it. And what they've  
11 provided in their July 10th filing doesn't meet the bar.

12 So, respectfully, we would just suggest that the way  
13 forward is to do the discovery. We submitted some targeted  
14 requests with our response this week. The defendants agree on  
15 page 13 of their brief, as the Court noted in May, that that's  
16 the next step. It's a reasonable solution. And we've put it on  
17 the schedule where by August 21 we could have all of that wrapped  
18 up so the Court can consider the benefit of that information in  
19 hearing defendants' motion to stay the PI pending appeal. We  
20 think that would be efficient. If the Court doesn't have  
21 questions, I'm happy to touch briefly on a couple of key points  
22 on each of the three paragraphs in issue.

23 THE COURT: No, go ahead.

24 MS. PAPEZ: Paragraph 2, again this is the judgment  
25 security, I just want to stress this was a provision that was

1 based on an extraordinary record that the defendants don't engage  
2 in their briefing.

3 We initially moved to escrow the funds because we wanted  
4 to target the specific corpus of funds that we identify in our  
5 preliminary injunction and verified complaint papers as tied to  
6 the fraudulent scheme at issue. It was at the defendants'  
7 request over liquidity concerns that we and the Court agreed to  
8 modify that provision as entered to allow for the pursuit of a  
9 bond or other substitute assets.

10 And I stress that because we did, you know, take, again,  
11 extraordinary steps. We filed four different sets of pleadings  
12 and then ultimately modified that provision to allow for the bond  
13 or substitute assets that they requested, and that's why I think  
14 it's difficult to reconcile their position of impossibility.

15 If you read their brief closely, their July 10th brief, it  
16 makes much of the fact that they can't put \$21 million in an  
17 escrow or they can't secure a bond for that total amount, but we  
18 and the Court went out of our way to say in that provision you  
19 can use a combination of the two.

20 And what's really striking, I think, when one reads  
21 between the lines in the July 10th filing, is that these  
22 defendants, of the 60 million in net assets that they proffer --  
23 we did some additional diligence -- you'll see it's a very large  
24 villa, a ranch, private airplanes, you know, enumerable real  
25 estate holdings that we haven't verified, this undisclosed

1 financial statement, there are assets available to these  
2 defendants. What we're struggling with is why haven't we been  
3 able to get to a point where we can talk about what they can do?  
4 You know, they're very careful and calibrated in saying we can't  
5 give you \$21 million in cash or we haven't been able to get a  
6 bond for 21 million, not including it's their burden on that.

7 But what we would like to do, Your Honor, is take  
8 advantage of some of the assets and admissions and profits they  
9 concede, like the discovery to find out what we can do and,  
10 perhaps, make this order make sense in a way that protects our  
11 clients' interests that the Court, I think, rightly found on the  
12 record requires protection in this case. The record further  
13 bears that out while also respecting the defendants' position.

14 So, on paragraph 2, I think we can find a way forward if  
15 we engage in the discovery that they concede is appropriate on  
16 page 13 of their brief.

17 With respect to paragraphs 5 and 7, Your Honor, I think  
18 paragraph 5 literally speaks for itself. If you look at their  
19 page 5 of their brief, they actually leave off and don't quote  
20 the portion in issue which says we asked them, as a condition of  
21 a privilege they requested -- they signed agreements with us, we  
22 cited them in our reply brief; they're also cited in our  
23 complaint -- where, as a business partner, they agree to keep our  
24 Amazon business information confidential. They know what we  
25 meant by that. They signed the contracts.

1           When we talked about the PI on May 21, they said they'd be  
2 happy to comply, but then afterward they said to us, you know, we  
3 really would like to retain some of the information so we can  
4 defend the case. We said no problem. But because it's our  
5 business information and we're only allowing them to retain it  
6 now for purposes of defending this litigation, we asked them and  
7 actually put into the agreed paragraph 5 that the Court entered a  
8 provision that says, please give us an inventory that you,  
9 defendants, think is confidential and that you need to retain for  
10 your defense. It's black and white. Seven days after the PI was  
11 entered they were supposed to give us that inventory as a  
12 condition of the privilege they requested. They didn't do it.  
13 They never corresponded with us, even after we pointed it out in  
14 our July 7th filing. They never told us why they can't give us  
15 this information, and now they come to the Court and say, well,  
16 we can't do it because we don't know what Amazon means.

17           Respectfully, Your Honor, paragraph 5 is clear. It's what  
18 they think is confidential that they want to retain for purposes  
19 of this case. They can do that. They should do it. All we're  
20 asking is they provide us the inventory. We're still willing to  
21 allow that use for the case, but they have to tell us what they  
22 have and how they want to use it.

23           I will point out to the Court, this is an issue because we  
24 have a cease and desist issue from our business partner. This is  
25 Exhibit 7 to our reply brief this week where apparently some

1 brokers on behalf of the defendants in this case may be using  
2 confidential information about these properties that are subject  
3 to the PI to market or try to value them. That's not a permitted  
4 use.

5 Again, we're happy to work with them, but we need to  
6 understand what's going on here. So, we need an inventory and we  
7 would like an order just directing them to give us the inventory  
8 of what they have, what they want to keep for the litigation, and  
9 end it there.

10 On paragraph 7, I think it's the same issue. The  
11 anti-dissipation is critical. I think that the lawsuit that was  
12 filed against the defendants, the new lawsuit in Colorado earlier  
13 this month and some of the criminal seizures that they've  
14 admitted, are further record evidence that the assets they  
15 have -- and there are substantial assets -- are in jeopardy. We  
16 could all be moving toward a merits judgment that we can never  
17 collect. We have to protect our clients' right on that. They  
18 have not met their burden of explaining why that condominium sale  
19 did not violate paragraph 7, number one, and I'll get to the  
20 evidence in a moment.

21 But I want to point out that their statement in their  
22 opposition brief that the condo has no relevance to the  
23 preliminary injunction -- that's page 8 of their brief -- they  
24 say the condo has no relevance to the preliminary injunction,  
25 goes well beyond paragraph 7. It's obviously relevant to

1 paragraph 2. If they're selling real estate and taking large  
2 amounts of cash and not giving one penny of the money due under  
3 paragraph 2, that's a problem under the preliminary injunction,  
4 regardless of paragraph 7.

5 And on paragraph 7, the anti-dissipation, the point that  
6 the condo was purchased in 2017 is irrelevant. We lay it out in  
7 our brief, and it's in the defendants' own documents. They have  
8 a mortgage, a construction mortgage on that condo that far  
9 exceeds the condominium's value. It's a \$3.3 million what's  
10 called a construction loan secured by the condo, and the lender  
11 is listed as Patricia Watson, who is the same individual that the  
12 defendants accuse in the April 2nd e-mail attached to our brief  
13 as being involved with the Amazon White Peaks transactions in  
14 this case.

15 So there's a direct connection. They haven't rebutted it.  
16 We really think we have to come to ground on what happened to  
17 those sale proceeds, whether they're disposing of any other  
18 assets, and, you know, come to terms on some way to satisfy the  
19 provisions of these injunctions that will protect both parties'  
20 rights. I'm happy to answer any further questions that the Court  
21 may have.

22 THE COURT: No, I don't have any at this time. All right.  
23 Who's going to respond on behalf of WDC?

24 MR. GARNETT: Stan Garnett, G-A-R-N-E-T-T, on behalf of  
25 the defendants.



1 THE COURT: Go ahead, Mr. Garnett.

2 MR. GARNETT: Thank you, Your Honor. I was just noting  
3 that during counsel's argument I missed about 45 seconds of it  
4 because the Governor of Colorado issued an emergency order that  
5 went to everybody's cell phone, and I was trying to figure out  
6 how to get rid of that so I could get back to the hearing, so if  
7 I missed something that counsel mentioned that I need to respond  
8 to, please let me know. That's certainly not my intent, to not  
9 respond to appropriate issues.

10 THE COURT: Okay.

11 MR. GARNETT: It's more of the excitement, I guess, of  
12 practicing law and everything remotely these days.

13 Your Honor, there are a number of issues that are raised  
14 by what's in front of the Court today. I do think that we did a  
15 good and thorough job of responding to the issues about  
16 compliance with the preliminary injunction, and I'm not intending  
17 to go into great detail on those unless the Court has questions.  
18 I do think the one thing that's important to keep in mind, given  
19 the position that we're at in the case, is that this is an  
20 incredibly complicated case. The relationship between these  
21 parties, these commercial real estate transactions, were very  
22 complicated and involved a number of layered and different types  
23 of fees that were paid to different parties involved, and it's  
24 not the kind of thing that one can quickly come in and summarize  
25 for the Court what was happening to these parties for these

1 complex transactions.

2           However, it was very important to Mr. Watson and WDC that  
3 we respond to the allegation that we have not complied -- that  
4 they have not complied with the Court's order, and I think that's  
5 why the response to the motion on the merits was filed. I do  
6 think there's an issue about the nature of the appeal that's  
7 being filed and about what impact there is on the jurisdiction of  
8 the Court.

9           We did not think that that was an issue that was  
10 appropriate to raise in the pleadings, but we wanted the Court to  
11 know that we took the Court's order seriously and intended to  
12 respond to that on the merits, but if the Court wanted us to  
13 provide prompt briefing on the issue of jurisdiction, we would  
14 certainly be happy to do that.

15           One of the things that's very interesting about the papers  
16 that were filed a little more than 24 hours ago by the plaintiffs  
17 is that the plaintiffs provide a very confusing and, frankly,  
18 inaccurate portrayal of what the nature of these transactions  
19 were in the {indiscernible}.

20           One of the things we mentioned in the hearing back on May  
21 21st was that the plaintiffs far overestimated the amount of  
22 money that Northstar, which is WDC Holdings, and Brian Watson  
23 actually received from Amazon, and that continues in the latest  
24 filings. They're asking for an escrow of \$21 million and, as we  
25 noted in that hearing, these defendants never received anywhere

1 near that amount of money in connection with the transactions,  
2 and if the Court were to order discovery of Mr. Watson's assets,  
3 we do think one appropriate remedy also would be to order that  
4 the defendants are able to conduct expedited discovery of  
5 Amazon's actual payments to the defendants so we can clarify that  
6 issue and some of the confusion around that.

7 But where we end up, Your Honor, frankly, given what's in  
8 front of the Court at this point, is we think it would be  
9 appropriate to hold off on ruling on these issues until August  
10 21st when the Court has an opportunity to consider the motion for  
11 stay that we filed. There will be more clarification of what the  
12 impact has been of the notice of the appeal, of the injunctive  
13 order which, of course, is an appeal of right, but I think  
14 counsel is correct that there's some uncertainty as to what the  
15 implication is of the pending matter in the trial court.

16 And rather than moving headlong into discovery in a case  
17 in which there's a motion to dismiss pending and the pleadings  
18 are not close to being closed, we think that holding off until  
19 the 21st, get clarification with regard to the issues of appeal,  
20 and then the Court can consider the stay at that time, that would  
21 be an appropriate approach at this point.

22 With regard to the documents, the confidentiality of the  
23 documents, I'm frankly surprised by the position that's being  
24 taken. There's no reason in the world that we can't figure this  
25 out. However, the documents that we have are documents that we

1 are going to need to defend and represent Mr. Watson and WDC  
2 Holdings as the case proceeds.

3 So, even if certain documents are returned to Amazon,  
4 we'll have to continue to maintain copies of those documents,  
5 which is why we felt that dealing with this proposed order was an  
6 appropriate way to address the issues.

7 And then finally, Your Honor, with regard to the sale of  
8 the condominium, I think there may be some confusion about what  
9 the Court actually ordered. We have been very careful to comply  
10 with the wording of the Court's order and the Court's injunction.

11 The issue here was, as counsel just indicated, asking us  
12 to turn over a corpus of funds that they believe was received by  
13 Mr. Watson and by WDC, which, of course, we contest and we've  
14 dealt with that in the past with the Court. The issue was not to  
15 appoint a receiver for WDC or for Northstar or to close them down  
16 or to force Mr. Watson or WDC not to do any business, it was to  
17 issue a specific order that had specific provisions which we've  
18 complied with.

19 So, again, Your Honor, I believe we covered the factual  
20 issues thoroughly in our filing. We haven't had a chance to  
21 respond to the -- in writing to the pleading that was filed by  
22 the plaintiffs Wednesday night. We could do that if you wanted  
23 us to, but I think that this presents the Court with some pretty  
24 clear options of how to approach it at this point.

25 THE COURT: All right. Thank you, Mr. Garnett.

1 Ms. Papez, short reply.

2 MS. PAPEZ: Of course, Your Honor, of course.

3 First, just a couple of things. Mr. Garnett just  
4 represented that the defendants were careful to comply with the  
5 injunction. It's undisputed that they have not complied in any  
6 respect with paragraph 2's judgment security. They haven't  
7 posted a bond, a partial bond, a dollar, a penny, escrow, any  
8 substitute assets. I refer the Court to docket 82-3. That's the  
9 financial statement they submitted to the Court claiming over  
10 \$60 million in net assets.

11 If the Court looks on page 1 alone, it lists over a  
12 quarter million dollars in cash. We still don't know. They  
13 still haven't answered what happened to the condo receipts from  
14 the sale in June. And then it lists, I would note, personal real  
15 estate equity net of encumbrances of over \$5 million.

16 Your Honor, respectfully, we would submit, if they would  
17 work with us in good faith, which is what the law requires under  
18 the standards in both briefs, we could come to some agreement to  
19 put something up by means of judgment security, under this  
20 preliminary injunction and on paragraph 5 on the information.  
21 Mr. Garnett just said he's well aware of what his client  
22 possesses of our confidential information that they intend to use  
23 for their case. All we ask and all the PI requires on that is  
24 for them to send us a list, write us an e-mail, send us a note,  
25 say what you've got in your possession and that you intend to use

1 it for the case, and, you know, we'll go from there, but they  
2 haven't done that.

3 The last point I want to stress, because I think there are  
4 ways forward here that would advance and protect the interests of  
5 both sides, is that it makes no sense to hold off on the  
6 discovery that every -- I think everyone agrees; they agree, we  
7 agree, and the Court countenanced on May 21, would help us come  
8 to ground on some of these issues. We proposed a schedule and  
9 some discreet requests with our filing this week that would allow  
10 us to ferret out any genuine problems with the PI by May 21st, so  
11 the Court could have an informed discussion on whether to stay  
12 the current injunction or, and I submit -- I mean, you know, we  
13 haven't discussed this with our client because we don't have the  
14 information from the defendants to get authorization on this  
15 provision, but we are not looking to get blood from a stone.  
16 We're not looking to enforce or persist in an injunctive order  
17 that is truly impossible to comply with or that has a flaw that  
18 they can actually prove, and we don't think it's necessary to  
19 waste the Fourth Circuit's time on that either.

20 If they would cooperate, while the Court absolutely has  
21 jurisdiction and we can get this done by August 21, we can all  
22 come before the Court, maybe with a proposal on an agreed  
23 modification that will save everyone a lot of time and headache.

24 So, we would respectfully submit, Your Honor, and we're  
25 happy to put on papers on the jurisdictional point, the Court has

1 jurisdiction to entertain and rule on today's motion, to  
2 authorize the discovery that we've proposed and defendants agree  
3 on page 13 of their brief may help us all come to an agreeable  
4 position on these open issues, and we can do so by the time the  
5 Court hears the stay motion on August 21st, or maybe we can  
6 resolve some of these issues and, perhaps, even, moot the appeal.

7 THE COURT: All right. Thank you.

8 MR. GARNETT: Your Honor --

9 THE COURT: Yes, sir.

10 MR. GARNETT: Would you consider a very brief response  
11 from the defense, Your Honor?

12 THE COURT: Go ahead.

13 MR. GARNETT: Thank you.

14 THE COURT: All right.

15 MR. GARNETT: Again, this is Stan Garnett. I'll be very  
16 brief. First of all, Your Honor, with regard to the financial  
17 statement that was submitted which we wanted the Court to have a  
18 complete picture of Mr. Watson's assets, Mr. Watson is a Colorado  
19 commercial real estate developer, and not unusual for this kind  
20 of businessperson -- and I, frankly, have been representing him  
21 now for almost -- this kind of businessperson in Colorado for  
22 almost 40 years -- virtually everything that he owns is leveraged  
23 or is co-owned by other investors.

24 For example, there is an indication on the financial  
25 statement of \$45 million in value and assets, but every one of

1 those is also co-owned with other investors. He's been trying to  
2 explore whether he can liquidate those and has been unable to do  
3 so. And this financial statement and these assets were not  
4 sufficient for the three different bonding companies that we went  
5 to to try to get bond.

6 And then finally, with regard to the confidential  
7 information, because this seems like an issue that we absolutely  
8 should not have to waste the Court's time on, if the Court wanted  
9 us to provide to the Court, to counsel, an inventory of the  
10 documents that we have from Amazon and then Amazon can tell us  
11 which ones they think are confidential, which is what we've asked  
12 them for several times, we can certainly do that, and I think  
13 that would provide compliance on that issue.

14 THE COURT: Aren't the documents themselves identified as  
15 being confidential or not?

16 MR. GARNETT: They're not, Your Honor, because they were  
17 documents that were generated and produced in the course of these  
18 very complex real estate transactions. So, some of them may, but  
19 many of them simply were the kind of documents that were  
20 created -- and counsel and the plaintiffs now believe in  
21 hindsight that they're confidential and want protection, which is  
22 why we thought a protective order would be sufficient to provide  
23 that.

24 THE COURT: All right. Ms. Papez, why doesn't it solve  
25 the problem to have an inventory of the documents produced by WDC



1 and then Amazon can go back and look at what they believe needs  
2 to be protected?

3 MS. PAPEZ: Your Honor, it would, and that is literally  
4 what is in paragraph -- of the PI and that they didn't do on June  
5 16. I'm pointing to page 2 of our reply brief. We quoted it.  
6 It's docket 57 at 5, the PI. It says, quote, "the defendants  
7 have to provide 'copies and/or a description' of the information  
8 that defendants, Mr. Garnett's clients, consider to be Amazon  
9 confidential and necessary for defendants to retain for the  
10 case."

11 That's all we asked, and the Court actually entered it,  
12 and Mr. Garnett commented, "if the Court would require it." It's  
13 been required since June 5th, and it was due on June 16th. So,  
14 we'd love to have it. I think, if they would provide it, I think  
15 we could resolve that issue.

16 And with respect to the other assets, Your Honor, we  
17 respectfully refer the Court to our reply brief this week where  
18 everything that Mr. Garnett says today doesn't meet the burden of  
19 proof under the controlling standard on our motion because  
20 they're representing that they couldn't get a bond. They're  
21 representing that investors precluded them from pledging assets.  
22 There are no investors involved in his personal real estate  
23 equity. He could go get a home equity line or a line of credit  
24 on those, put some money up on paragraph 2 of the PI, if they  
25 were to work with us on that, and we would be happy to do so,

1 maybe we could come to a satisfactory place where we have some  
2 judgment security that the Court ordered, but they haven't  
3 verified any of this for literally months now. They just come  
4 with counsel's assertion, but they haven't provided any proof,  
5 any evidence. The discovery that we attached to our brief, Your  
6 Honor, would get at all of that. If they will cooperate with us  
7 on it, by the time we come back to the Court on August 21, I  
8 think we could maybe have all of this resolved, but we need the  
9 cooperation on the documents.

10 THE COURT: Okay. All right. Well, I think that  
11 discovery is the answer, and there's no reason to delay that  
12 discovery. And, you know, this -- the issue of a TRO is an  
13 extraordinary relief. I believed it was appropriate then, and I  
14 believe it's appropriate today, given the facts of the case. And  
15 although the defendant, Mr. Garnett, has argued that now that  
16 it's on appeal, the issue as to whether money damages would  
17 satisfy this -- any judgment and therefore the injunctive relief  
18 was inappropriate, I found that there was sufficient reason to  
19 believe that injunction was necessary given the liquidity of the  
20 assets of the defendants. And Amazon, I think, has still  
21 diligently pursued trying to identify those assets and why  
22 defendant has been unable to satisfy paragraph 2.

23 So I think that discovery is the answer, and we'll enable  
24 Amazon to determine whether or not WDC and Mr. Watson have the  
25 assets to comply with paragraph 2. And I don't think that even

1 the -- I don't think there's any issue of jurisdiction based on  
2 the case being on appeal, because discovery can be ordered at any  
3 juncture of a case. And when there's a question as to whether  
4 assets are being dissipated or not and the judgment, if it  
5 ultimately is found couldn't be satisfied, then the Court can  
6 always advance discovery, and I think this is an appropriate case  
7 where discovery should begin, not withstanding the posture of the  
8 case here.

9 So, let's move forward with discovery as you had  
10 identified, Ms. Papez, and add a request for WDC to identify the  
11 information that it has from Amazon, and you can break that out  
12 as to whether you want a complete inventory of all the documents  
13 and information that they have or you can try and identify  
14 subsequently independently what you -- what WDC believes is  
15 confidential.

16 And I think the issue of paragraph 7 is probably subsumed  
17 by your request for the financial information pursuant to  
18 paragraph 2, but let's prepare those discovery requests and get  
19 them -- whether they're an interrogatory or document requests --  
20 get that rolling with a response date prior to the hearing on  
21 August 21. If there are issues that arise in the discovery  
22 requests and there's an issue that needs to be raised before the  
23 magistrate judge, let's do so expeditiously so we can try to have  
24 answers to some of these questions before August 21st. I think  
25 the time is now to pursue these issues and get them resolved

1 before the August 21st hearing.

2 I encourage you to continue to cooperate in that endeavor,  
3 and hopefully the picture will be much clearer in a month. So,  
4 let's work on that, and we'll issue an order to that effect.

5 Are there any other issues that the parties would like to  
6 address this morning?

7 MS. PAPEZ: Your Honor, it's Elizabeth Papez. Just one  
8 thing to ease the Court's burden. We actually did put a proposed  
9 order in on Wednesday -- it's docket 84-1 -- that outlines the  
10 schedule, and we actually also attached and included at docket  
11 84-2 the specific expedited discovery request we have already  
12 prepared and the schedule that we propose in the proposed order.  
13 Docket 84-1 would give defendants the 30 days, the normal 30 days  
14 under the federal rules to respond to the request and still allow  
15 time for the parties to put in a brief before the August 21  
16 hearing for the Court's benefit.

17 THE COURT: Okay. I looked at that. I didn't recall  
18 whether it fit in here. Sitting here now, I didn't recall  
19 whether it included the request for inventory of information that  
20 WDC possessed, but maybe I missed that.

21 MS. PAPEZ: Thank you, Your Honor.

22 MR. GARNETT: Sorry, counsel.

23 MS. PAPEZ: No, please, go ahead.

24 MR. GARNETT: No, no, it's fine. I had one matter I  
25 wanted to raise, but it's slightly different, so go ahead,

1 counsel.

2 MS. PAPEZ: Your Honor, I was going to say you're exactly  
3 right, there's no separate request on the inventory because it's  
4 already in paragraph 5 of the PI, but to Your Honor's point, we  
5 believe it would be subsumed in the draft discovery request we  
6 put in at docket 84.2. So we, of course, defer to the Court on  
7 whether it's necessary to add a line to the order on that or not.

8 THE COURT: Okay. Well, let's make sure that the  
9 discovery requests include all information that you're pursuing  
10 pursuant to paragraphs 2, 5 and 7.

11 And if you're satisfied with the requests as they stand  
12 today, that's fine, but, you know, you should -- what I'm -- what  
13 I want to make sure we're doing is making these requests  
14 independent of the preliminary injunction, which is on appeal,  
15 and I don't think that -- so I want to make your discovery  
16 request discreet, I guess is the way I'm saying it, from the PI  
17 information because it's all relevant for purposes of pursuing  
18 the litigation.

19 And so, if you're satisfied with that -- I'll go back and  
20 look in a minute, but if you're satisfied with the 84-1 and 84-2  
21 on the docket now, then that's fine. If you revise it, then  
22 please submit those revisions.

23 MS. PAPEZ: Your Honor, thank you. We understand  
24 completely. I do think, in light of the Court's instructions  
25 now, we'll review them. There were a few requests that are tied

1 to the injunction. We will review and endeavor to revise those  
2 in accordance with the guidance just now and resubmit.

3 THE COURT: Okay, great. Mr. Garnett, you had a matter?

4 MR. GARNETT: Yes, Your Honor. Thank you. And first of  
5 all, we understand the Court's order, and we will work with  
6 counsel, and hopefully we'll be able to comply with this without  
7 having to bring matters back either to Your Honor or to the  
8 magistrate.

9 Your Honor, the one additional matter I wanted to raise, I  
10 do think, as I mentioned in the beginning of my argument, part of  
11 what's driving some of the difficulty here and some of the  
12 confusion is the confusing factual nature and complicated factual  
13 nature of what happened and, particularly, this continued  
14 assertion that the defendants who seek \$21 million through  
15 various things and that that should be put into escrow, we do  
16 think it would be helpful and we think it would be appropriate,  
17 given the Court's order about discovery for the plaintiffs, to  
18 permit the defendants to have similarly focused and limited  
19 discovery to ask the plaintiffs to establish their record of  
20 payments of what was paid from either Amazon plaintiff to Watson  
21 or to WDC.

22 And we think, if we can get that clarified through  
23 discovery, that will also, I think, streamline some of these  
24 issues and avoid some of this confusion in the future. So we  
25 would be asking the Court to also permit that limited discovery

1 from the defendants to the plaintiffs.

2 THE COURT: All right. And Ms. Papez, what's your  
3 response to that?

4 MS. PAPEZ: I guess my response is -- you know, we'll  
5 obviously defer to the Court's judgment and cooperate as needed  
6 to advance the case. I will say procedurally that request  
7 strikes me as premature, perhaps unprecedented in the sense that  
8 we are the plaintiffs, we're at the pleadings stage, and the  
9 question in issue about what Northstar or the defendants have  
10 received on our property, this information is in their  
11 possession, custody and control. They should know what payments  
12 they received. When you look at their brief, their reply brief,  
13 their July 10 brief at page 6, they admit they received a number  
14 of funds, and they say they spent them in the ordinary course.  
15 So, their own books and records will show what they received.

16 I think, Your Honor, respectfully, what they are asking is  
17 a premature discovery request about our damages case. And again,  
18 we're at the pleadings stage, so this is not the time or the  
19 place for us to be producing damages discovery, and it doesn't  
20 strike me as at all necessary, respectfully, to the issues before  
21 the Court today.

22 THE COURT: Well --

23 MR. BROWER: Your Honor, this is Greg Brower. If I could  
24 respond to that quickly on behalf of the defendants. In a normal  
25 case, counsel, of course, would be exactly right. We're at the

1 pleadings stage, and it would take discovery to get to the ground  
2 truth about what damages really are. The problem in this case,  
3 as Your Honor well knows, is that a preliminary injunction was  
4 entered in large part based upon a presumption, we believe an  
5 erroneous presumption, of what the damages in this case would be  
6 for plaintiffs to prevail. And so we struggled with that.

7 As Your Honor knows, we argued against it. Your Honor,  
8 nevertheless, entered the order that Your Honor did, but before  
9 we continue to operate under what we believe is kind of a false  
10 reality that there is really \$21 million at stake here, is --  
11 \$21 million of payments to our clients, we think we ought to be  
12 able to clarify that, and it would benefit the Court and the case  
13 immensely to get to the ground truth about that issue at the very  
14 outset, because many, many other decisions and orders, perhaps,  
15 are going to be based upon what we think is an allegation without  
16 merit, and plaintiffs, frankly, should be forced to prove that up  
17 at this preliminary stage, even though that would be unusual in  
18 the normal case.

19 THE COURT: Yeah. Well, Amazon did identify where the  
20 \$21 million number came from in their pleadings previously, and  
21 so you have that information, correct? And what else do you need  
22 to analyze that?

23 MR. BROWER: Your Honor, we seek evidence of actual  
24 payment. It's one thing to throw out a number; it's a whole  
25 nother thing for the plaintiffs to actually demonstrate to the



1 defendants and to the Court that the payments in that amount were  
2 actually made. If they were made, as the plaintiffs have alleged  
3 repeatedly, it ought to be awfully easy for them to demonstrate  
4 that by way of responding to a limited discovery request. If  
5 they can do that, we can move on, but they simply have not done  
6 that. Again, I think it's an essential threshold issue, given  
7 the unique nature of this case.

8 THE COURT: I guess I'm missing something. Payments made?  
9 You're talking about these lease agreements and purchase  
10 agreements of different properties by Amazon to these third  
11 parties, and then the money flowing to a couple of these brokers  
12 that -- is that what you're talking about? I think I'm missing  
13 the point.

14 MR. BROWER: No, Your Honor. Thank you for asking for the  
15 clarification. No, we're simply talking about, at bottom,  
16 evidence -- whether there is evidence that the plaintiffs  
17 actually made payments of -- \$21 million in payments that were  
18 received by these defendants, Watson and WDC, because, of course,  
19 the injunction requires those defendants to put into escrow that  
20 amount based upon the premise, the allegation that they received  
21 it, but no evidence has been offered.

22 THE COURT: Okay. I think I understand.

23 MR. BROWER: We simply seek to make plaintiffs show the  
24 evidence. We don't think that that's happened, and we've seen no  
25 evidence that it did.

1 THE COURT: Okay. Ms. Papez, do you want to respond?

2 MS. PAPEZ: Sure. I mean, I think, you know, Your Honor  
3 correctly identified the position. We put in evidence in the  
4 verified complaint and in the PI papers that ties expressly  
5 \$21 million, and it's not 21 million just in fees, right; the 21  
6 million two-five-zero in the PI comes from, number one, the  
7 \$5 million payment that the defendants concede they received from  
8 the former Northstar employees who conducted the White Peaks sale  
9 transaction at issue in this case. Those were the individuals  
10 who were cooperating with the government and who have disgorged  
11 their own proceeds, the White Peaks defendants, as we've notified  
12 the Court.

13 So part of the 21-two-five-zero is that five million.  
14 There's no contest that the defendants received that money,  
15 number one.

16 Number two, with respect to the remaining, I think it's  
17 \$12,250,000, that is the money that Your Honor correctly  
18 identified as the subject of the evidence we put in at the PI  
19 stage and in our verified complaint tying that specific corpus of  
20 funds to a document that Amazon discovered in its own internal  
21 investigation. It was a document that was recovered from the  
22 recycle bin of an individual who interacted with these defendants  
23 and expressly designated his own internal share, which is the  
24 kickback. There is no world in which an Amazon individual,  
25 Amazon personnel approving these deals could ever have a, quote,

1 "share" in broker proceeds of a deal. It's against our company  
2 policy. It was the reason for this investigation, the  
3 informants, the parallel criminal investigation. I just want to  
4 be very clear about that. And we put in a document saying that  
5 the rest of the money ordered in paragraph 2 of the PI was --  
6 were funds that this insider document specifically designated as  
7 his share of these proceeds or the fees to these defendants.

8 And then my last point, Your Honor, is we met our burden  
9 on that. If they want to come back and say they never actually  
10 received all of that money, which, frankly, that ship has sailed  
11 on the five million because they admit they took that money, and  
12 they still have never accounted to us for where it is or why they  
13 can't put it up for paragraph 2. But on the rest of it, if they  
14 want to say they never actually got that money, that is  
15 information within their possession, custody and control. They  
16 don't need discovery from us, Your Honor, to prove that point or  
17 that defense.

18 THE COURT: Yeah, and so --

19 MR. BROWER: It sounds like -- I'm sorry, Your Honor. I  
20 was going to say it sounds like the plaintiffs are not confident  
21 they can actually prove that \$21 million were paid to our  
22 defendants, not paid in total to a variety of parties, perhaps,  
23 relating to all of these transactions, but to these defendants.  
24 And, of course, the preliminary injunction is premised again on  
25 the allegation that these defendants received that amount of

1 money and, as a result, should put it into escrow, and we're  
2 saying that that didn't happen, and we're saying that the  
3 plaintiffs have not offered any evidence. And so, if we're going  
4 to do some limited discovery, it would make sense to satisfy that  
5 threshold issue.

6 Just one other minor point and I'll stop talking. This  
7 so-called White Peaks transaction that plaintiffs repeatedly  
8 bring up in their complaint and throughout this process, this  
9 case so far, that transaction, whatever it was, had nothing to do  
10 whatsoever with these defendants, with our clients. That was a  
11 transaction in which the seller apparently was an entity called  
12 White Peaks Capital, LLC or something to that effect. That was  
13 an entity that our client, Mr. Watson, had nothing to do with.

14 The five million that has been referenced was, long story  
15 short, Your Honor, was the result of when our client discovered  
16 that the principals behind White Peaks usurped the corporate  
17 opportunity to do that transaction with Amazon and a dispute  
18 erupted which resulted in a settlement and a payment of that  
19 money. But our client had nothing to do with that transaction  
20 with Amazon. So we from the outset see that as a red herring  
21 that continues to confuse and cloud the issues in this case.

22 THE COURT: Well, I understand that's your theory, that's  
23 your defense, and, of course, the pleadings that have preceded  
24 that have identified a different theory on who's really involved  
25 and whether they have worked together or not, and those are

1 issues that will be resolved down the road, but I don't think  
2 that discovery on Amazon's losses at this stage are appropriate,  
3 and I am certainly of the opinion that the \$21 million that I  
4 identified, that there's got to be evidence of that, but I think  
5 there's evidence of that in the record already, and whether  
6 Amazon actually paid out all of that money or whether the losses  
7 were arrived at by different calculations is a matter that we're  
8 going to save for down the road.

9 So, I'm not going to order reciprocal discovery on the  
10 \$21 million. All right. Well, thank you, all, for getting on  
11 the line today, and we'll -- Ms. Papez, if you'll look at your  
12 84-1 and 84-2 and let us know whether you're going to revise it  
13 or not, then we'll proceed accordingly.

14 MS. PAPEZ: We will do that. Thank you, Your Honor.

15 THE COURT: All right.

16 MR. GARNETT: Your Honor, thank you very much for your  
17 time this morning.

18 THE COURT: All right. All right. Thank you, all.

19 (Proceedings adjourned at 11:41 a.m.)  
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25

C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that  
the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

/s/ Scott L. Wallace

7/20/20

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**Scott L. Wallace, RDR, CRR**  
**Official Court Reporter**

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**Date**